

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 112

INTRODUCER: Senator Dean

SUBJECT: Property Fraud

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 112 defines the offense of fraudulent creation of an interest in real or personal property. The bill makes a person who commits the new offense subject to punishment for a third-degree felony. A person commits the offense if the person, with the intent to defraud another, files or causes to be filed for recording in the official records any document against real or personal property that the person knows to contain a material misstatement, misrepresentation, or omission of fact. The bill also provides that a person who files a fraudulent construction lien is subject to penalties under the Construction Lien Law, not the newly-created offense in the bill.

The bill creates section 817.535, Florida Statutes.

II. Present Situation:

Fraud

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third-degree felony if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S., makes it a third-degree felony to knowingly falsify any matter within the jurisdiction within the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. Under s. 713.31(3), F.S., it is a third-degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the

lien, includes work not performed, or compiles his or her claim with willful and gross negligence.¹

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecutions against him.² Although the liens in this case were “fantastic, delusional and incredible,”³ with each claiming the amount owed was “\$48,489,000.00 plus interest, penalties, and fees,”⁴ the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.⁵ The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.⁶ The defendant was subsequently sentenced to 30 months in prison for the fraudulent filings.⁷

Fraudulent Recording of Deeds

Property owners who have wild deeds⁸ recorded on their property may pursue a suit to quiet title, “an equitable action that involves clearing title of an invalid charge against the title.”⁹ In the alternative, property owners may sue for slander of title, a tort action for which damages may be recovered.¹⁰ The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney’s fees.¹¹ A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.¹²

Florida Recording Statute

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or

¹ Section 713.31(2)(a), F.S.

² *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK. (N.D. Fla. June 6, 2011).

³ *Id.* at *7.

⁴ *Id.* at *5.

⁵ *Id.* at *7.

⁶ *Id.* at *9.

⁷ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited Jan. 4, 2013).

⁸ A wild deed is a recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded.

⁹ See 65 AM. JUR.2D *Quieting Title* s. 2 (2012).

¹⁰ *Id.*

¹¹ Section 86.081, F.S., and see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984).

¹² *McAllister v. Breakers Seville Ass’n Inc.*, 981 So. 2d 566 (Fla. 4th DCA 2008).

in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.¹³

Section 695.01, F.S., is a notice-recording statute and “Florida courts over time have described and applied Florida’s recording statute in a manner that is consistent with a ‘notice’ type of recording statute.”¹⁴ The recording system serves two purposes: it protects existing property owners and protects new buyers.¹⁵ The system does so by allowing access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title. Because these records are open for the public to rely on and have the potential to call into question the owner’s clear title to the property, having accurate property records is vital. Clerks of court have very little control over which documents are recorded, because the law generally does not require that the clerk examine a document for its validity or accuracy.¹⁶

III. Effect of Proposed Changes:

The bill makes the offense of fraudulent creation of an interest in real or personal property. The bill subjects a person who commits the new offense subject to punishment for a third-degree felony.¹⁷ A person commits the offense if the person, with the intent to defraud another, files or causes to be filed for recording in the official records any document against real or personal property that the person knows to contain a material misstatement, misrepresentation, or omission of fact.

Although ss. 817.54 and 713.31(3), F.S., provide penalties for fraud relating to mortgages and construction lines respectively, the bill criminalizes a broader range of fraudulent filings that may not otherwise be specifically addressed under the Florida Statutes. The bill also provides that a person who fraudulently records a claim for a construction lien pursuant to part I, ch. 713, F.S., is subject to penalties under the Construction Lien Law, and not the offense created under the bill.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ Section 695.01(1), F.S.

¹⁴ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

¹⁵ John G. Sprankling, *UNDERSTANDING PROPERTY Law*, 394-95 (2000).

¹⁶ *Cf.* Sprankling, 395.

¹⁷ A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a modest increase in the number of criminal cases filed and have a minimal fiscal impact.¹⁸

On January 30, 2012, the Criminal Justice Impact Conference estimated that a comparable bill would have an insignificant impact on the Department of Corrections. The Criminal Justice Impact Conference has not yet considered the impact of this bill on jail beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ Office of the State Courts Administrator, *2013 Judicial Impact Statement*, SB 112 (Jan. 2, 2013) (on file with the Senate Committee on Judiciary).